IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 15TH FEBRUARY 2005 / 26TH MAGHA 1926

Crl.MC.No. 8650 of 2002()

CMP.954/2001 of JUDL.MAGISTRATE OF FIRST CLASS, SULTHANBATHERY

.....

PETITIONER:

M.P. RADHAKRISHNAN, S/O. KARAPPAN,
OLAVATHOOR KRISHNA NIVAS,
MUTTIL AMSOM, VYTHIRI TALUK.

BY ADV. SRI.K.V.GOPINATHAN NAIR
SRI.G.RAJESH

RESPONDENTS:

---

1. NARAYANAN, S/O. ESWARAN,
BRANCH MANAGER, N.P.R. FINANCE LIMITED,
24, IIND FLOOR, CENTRAL ZONE APARTMENTS,
AMMONKOVIL ROAD, COCHIN-33.

2. THE SUB INSPECTOR OF POLICE,
MEENANGADI POLICE STATION.

3. THE STATE OF KEARLA REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA.

BY ADV. SRI.S.SREEKUMAR
PUBLIC PROSECUTOR SRI.THAVAMONY

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/02/2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl.M.C.No.8650 of 2002

Dated this the 15th February, 2005

O R D E R

The petitioner herein filed C.M.P.No.954 of 2001 before the Judicial First Class Magistrate's Court, Sultan Bathery under Section 451 Cr.P.C. The first respondent herein also filed C.M.P.No.955 of 2001 before the same court under Section 451 Cr.P.C. Both of them made a claim in respect of the same vehicle.

2. The petitioner is the registered owner of the vehicle and the first respondent is the Manager of a hire purchase company to which the vehicle is hypothecated. Both the petitions were heard together and disposed of by a common order. An order was passed to release the vehicle to the hire purchase company on executing bond. The said order is under challenge in this case.

3. Learned counsel for petitioner submitted that petitioner is the registered owner as well as permit holder of the stage carriage KL-8/J 4320 and he alone is competent to operate the vehicle. Though first respondent is the financier of the said vehicle, he cannot use the vehicle. Therefore, it is contended that petitioner is a better claimant. It is, however, admitted that there is a default in payment of the hire purchase instalments. It is also

admitted that there was a suit pending between parties relating to arrears of payment of the instalments.

4. The first respondent took possession of the vehicle pursuant to the terms of the agreement between the parties. As per such terms, first respondent is entitled to repossess the vehicle in case of default. In the above circumstances, the question is whether the hirer or the financier is entitled to possession and custody of the vehicle. This position was considered by this Court in the decision reported in Divakaran v. Abdul Kalam (1999(1) KLJ 217) as follows:

> "The Ist respondent has not denied the fact that some instalments as per the hire-purchase agreement is due from him to the petitioner. But his contention is that the amount claimed by the petitioner is incorrect and a suit is pending before the civil court regarding the actual hire-purchase amount due from the Ist respondent to the petitioner. Therefore, even though there is dispute with regard to the actual amount due, the fact remains that amounts are due from the Ist respondent to the petitioner toward hire purchase amount due in respect of the vehicle. Therefore, the right of the petitioner to re-possess the vehicle from the Ist respondent for non-payment of the hire-purchase amount as per the terms and conditions of Annexure-I cannot be disputed".

5. On a reading of the decision cited above, it is clear that the mere possession of the registration certificate of the vehicle by the hirer is no ground to release the vehicle to the registered owner, if it is found that the vehicle is under hire-purchase agreement and the financier has exercised his right to re-possess the vehicle for non-payment of the hire-purchase amount as stipulated in the hire purchase agreement. The

general principle that normally the vehicle should be returned to the person in whose name the registration certificate stands, is not applicable in cases where there is hire-purchase agreement in respect of the vehicle and the financier has exercised his right to re-possess the vehicle for default of payment of the hire-purchase instalments. Therefore, custody of the vehicle was rightly granted in favour of the Ist respondent.

6. In this background, the fact whether petitioner alone can ply the vehicle being the registered owner and permit-holder, is not of much relevance. Once first respondent, as the financier is entitled to re-possess the vehicle, the registered owner cannot resist re-possession and custody. Hence, the ownership of the vehicle alone cannot be made a ground to release the vehicle to the petitioner. The trial court has not committed any illegality and there is no ground to interfere in the order under Section 482 Cr.P.C.

The petition is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.M.C.8650/02

O R D E R

15.02.2005